

§ 283.20

7 CFR Ch. II (1–1–06 Edition)

(3) Has any conflict of interest which might impair the ALJ's objectivity in the appeal.

(b) *Disqualification of ALJ.* (1) Any party to the appeal may, by motion, request that the ALJ withdraw from the appeal on one or more of the grounds set out in paragraph (a) of this section. Such motion shall set forth with particularity the alleged grounds for disqualification. The ALJ may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) The ALJ may withdraw from any appeal for any reason deemed by the ALJ to be disqualifying.

(c) *Powers.* (1) Subject to review as provided elsewhere in this part, the ALJ, in any assigned appeal, shall have the power to:

- (i) Rule upon motions and requests;
- (ii) Set the time and place of a pre-hearing conference and the time of the hearing, adjourn the hearing from time to time, and change the time of the hearing;
- (iii) Administer oaths and affirmations;
- (iv) Regulate the scope and timing of discovery;
- (v) Issue and enforce subpoenas as authorized under 7 U.S.C. 2023(a) and these rules;
- (vi) Summon and examine witnesses and receive evidence at the hearing;
- (vii) Appoint expert witnesses in accordance with the provisions of Rule 706 of the Federal Rules of Evidence;
- (viii) Admit or exclude evidence;
- (ix) Hear oral argument on facts or law;
- (x) Upon motion of a party, decide cases, in whole or in part, by non-oral hearing procedures under subpart C of this part where there is no disputed material issue of fact;
- (xi) Perform all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;
- (xii) Take all other actions authorized under the Act and these rules, including the extension of time upon motion of a party or *sua sponte* for cause shown.

(2) The ALJ may not rule upon the validity of Federal statutes or regulations.

(d) *Who may act in the absence of the ALJ.* In case of the absence of the ALJ or the ALJ's inability to act, the powers and duties to be performed by the ALJ under these rules of practice in connection with any assigned appeal may, without abatement of the appeal, unless otherwise directed by the Chief Judge, be assigned to any other ALJ.

§ 283.20 Review by the Judicial Officer.

(a) *Filing of review petition.* (1) Within 30 days after service of the ALJ's initial decision, or any part thereof, any party may seek Judicial Officer review of such decision by filing a review petition with the Hearing Clerk. However, if another party files a motion for reconsideration under § 283.17(d), consideration of the review petition shall be stayed automatically pending resolution of the motion for reconsideration. If a motion for reconsideration is timely filed, a review petition may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(2) As provided in § 283.15(h), objections made before the ALJ regarding evidence or regarding a limitation on examination or cross-examination or other ruling may be relied upon in a Judicial Officer review.

(3) Each issue set forth in the review petition, and the arguments thereon, shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations or authorities being relied upon in support thereof. A brief in support may be filed simultaneously with the review petition.

(b) *Response to review petition.* Within 30 days after service of a copy of a review petition and any brief in support thereof, any other party to the proceedings may file a response in support of or in opposition to the review petition and in such response any relevant issue, not presented in the review petition, may be raised.

(c) *Transmittal of the record.* (1) Whenever a review petition of an ALJ's initial decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the appeal.

(2) Such record shall include: The pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions of law, orders, and briefs in support thereof, as may have been filed in connection with the appeal; the ALJ's initial decision; the motion for reconsideration of the ALJ's initial decision; the ALJ's initial decision on the motion for reconsideration and the review petition, and such briefs in support thereof and responses thereto as may have been filed.

(d) *Oral argument.* A party filing a review petition may request, within the prescribed time for filing such review petition, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, the responding party may file a request for such oral argument. Failure to make such request to appear before the Judicial Officer, within the prescribed time period, shall be deemed a waiver of the opportunity for oral argument. There is no right to appear personally before the Judicial Officer. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard by the Judicial Officer on review, whether oral or on brief, shall be limited to the issues raised in the review petition to the Judicial Officer or in the response to such petition, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit adequate preparation on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed within a reasonable time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to commence and conclude the argument.

(h) *Submission of briefs.* By agreement of the parties, a review may be submitted for decision on the briefs, but the Judicial Officer may direct that the review be argued orally.

(i) *Additional evidence.* If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented to the ALJ is material, not cumulative, and that there were reasonable grounds for the failure to present such evidence to the ALJ, the Judicial Officer shall remand the matter to the ALJ for consideration of such additional evidence.

(j) *Decision of the Judicial Officer on review.* (1) As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of the record and any matter of which official notice is taken, shall rule on the review.

(2) The Judicial Officer may adopt, reduce, reverse, compromise, remand or approve settlement of any claim initially decided by the ALJ under this part.

(3) The Judicial Officer shall promptly serve each party to the appeal with a copy of the ruling of the Judicial Officer which shall be considered the final determination and contain a statement describing the right to seek judicial review.

(4) Judicial review must be sought within 30 days of service of the final notice of determination by the Judicial Officer pursuant to 7 U.S.C. 2023(a).

§ 283.21 Ex parte communications.

(a) *ALJ; Judicial Officer.* At no time prior to the issuance of the final decision shall the ALJ or Judicial Officer discuss ex parte the merits of the appeal or review with any person who is connected with the appeal or review in an advocative or in an investigative capacity, or with any representative of such person. However, procedural matters shall not be included within this limitation; and furthermore, the ALJ or Judicial Officer may discuss the merits of the case with such a person if all parties to the appeal or review, or